



California Regional Water Quality Control Board

San Diego Region



Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

March 17, 2005

CERTIFIED-RETURN RECEIPT REQUESTED
7003 2260 0003 0649 5173

Mr. Mike Bingham
Fieldstone Communities, Inc.
5465 Morehouse Drive, #250
San Diego, California 92121

In reply refer to:
10-3021382.02:melbf

Dear Mr. Bingham:

Complaint No. R9-2005-0107 For Administrative Civil Liability Against Fieldstone Communities, Inc. for Violation of California Water Code § 13376 and State Board Order No. 99-08-DWQ, Morro Hills (WDID No. 9 37C321382)

Enclosed find Administrative Civil Liability Complaint No. R9-2005-0107 against Fieldstone Communities, Inc. (Fieldstone) for the Morro Hills construction site located near Vandergrift Boulevard and Douglas Drive in Oceanside, California, WDID No. 9 37C321382. The Complaint in the amount of \$262,500 is for violations of California Water Code section 13376 and Order No.99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity (General Permit)*.

Be aware that Fieldstone may waive its right to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board). Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the recommended assessment of civil liability in the amount of \$262,500 as set forth in the Complaint. Please note that any waiver will not be effective until reasonable opportunity for public participation has been provided pursuant to federal National Pollutant Discharge Elimination System (NPDES) regulations (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). The Regional Board will notify interested persons of any proposed settlement for the recommended liability and will solicit comments on the settlement for a period of thirty (30) days. In order for the Regional Board to accept the waiver of your right to a public hearing, Fieldstone must submit the following by 5:00 p.m., Friday **April 8, 2005**:

1. The enclosed waiver form signed by an authorized agent of Fieldstone; and
2. A cashier's check for the full amount of civil liability of \$262,500.

Waivers submitted after April 8, 2005 will not be accepted.

If Fieldstone does not elect to waive its right to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on May 11, 2005, at the City of Laguna

California Environmental Protection Agency

Mr. Mike Bingham
Fieldstone Communities, Inc.
Morro Hills
ACL Complaint No. R9-2005-0107

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March 17, 2005

Beach, City Council Chambers, 505 Forest Avenue, Laguna Beach, California. An agenda, with procedures for the hearing will be mailed to you not less than ten days before the hearing date. The meeting is scheduled to begin at 9:00 a.m.

If Fieldstone intends to present any written exculpatory evidence, or written evidence in mitigation at the hearing in response to Complaint No. R9-2005-0107, it must be received by 5:00 PM, Tuesday April 26, 2005 in order to be considered by the Regional Board at the public hearing. Please submit twenty (20) copies of any response, including evidentiary exhibits. Copies of material submitted will be forwarded to the Regional Board Members prior to the public hearing.

The Regional Board has established a written public comment period to solicit input on the Complaint. This includes publishing a notice in a local newspaper. The written public comment period for the Complaint ends at 5:00 PM Tuesday April 26, 2005. Oral comments can be made during the May 11, 2005 public hearing.

Please contact Frank Melbourn of my staff at (858) 467-2973 or FMelbourn@waterboards.ca.gov if you have any questions concerning this matter. The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Sincerely,



 JOHN H. ROBERTUS
Executive Officer

JHR:mpm:mja:ftm

Enclosures: 1. ACL Complaint No. R9-2005-0107
2. Waiver of Hearing Form

Copy with 1. Sean Flater, Rick Engineering Co., sflater@rickengineering.com
Enclosures: 2. Mo Lahsaie, City of Oceanside, mlahsaie@ci.oceanside.ca.us
3. S. Wayne Rosenbaum, Foley Lardner, LLP, srosenbaum@foley.com
4. Scott O'Brien Smith, City of Oceanside

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California Environmental Protection Agency

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN THE MATTER OF:

FIELDSTONE COMMUNITIES, INC.)	COMPLAINT NO. R9-2005-0107
MORRO HILLS)	FOR
NONCOMPLIANCE WITH CALIFORNIA)	ADMINISTRATIVE CIVIL LIABILITY
WATER CODE § 13376, AND STATE)	
BOARD ORDER NO. 99-08-DWQ)	March 17, 2005
WDID NO. 9 37C321382)	

FIELDSTONE COMMUNITIES, INC. IS HEREBY GIVEN NOTICE THAT:

1. Fieldstone Communities, Inc. (Fieldstone) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability under sections 13350 and 13385 of the California Water Code.

ALLEGATIONS

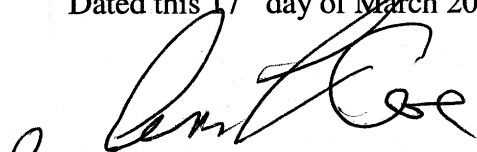
2. **Discharge of Sediment to a MS4 and Waters of the United States**
Fieldstone discharged sediment to a Municipal Separate Storm Sewer System (MS4) and navigable waters of the United States in the San Diego Region in violation of Order No. 99-08-DWQ of the California State Water Resources Control Board (State Board), section A.2. Fieldstone discharged sediment from the Morro Hills site into Pilgrim Creek or into the City of Oceanside's MS4 on at least six days:
 1. November 16, 2004;
 2. December 28, 2004;
 3. December 31, 2004;
 4. January 4, 2005;
 5. January 12, 2005; and
 6. January 20, 2005.
3. **Failure to Implement Storm Water Pollution Prevention Plan**
Fieldstone failed to implement its Storm Water Pollution Prevention Plan (SWPPP) by failing to install and maintain adequate Best Management Practices (BMPs) in violation of Order No. 99-08-DWQ section C.2 on at least 135 days:
 1. July 19, 2004;
 2. August 13, 2004; and
 3. October 1, 2004 through February 10, 2005

PROPOSED CIVIL LIABILITY

4. Based on consideration of the factors listed in sections 13327 and 13385 of the California Water Code, civil liability should be imposed on Fieldstone in the amount of \$262,500 for all violations, as follows:

- a. \$60,000 for the violations described in paragraph No. 2; and
- b. \$202,500 for the violations described in paragraph No. 3.

Dated this 17th day of March 2005



John H. Robertus
Executive Officer

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San Diego Region



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WAIVER OF RIGHT TO A PUBLIC HEARING

Mr. Mike Bingham
Fieldstone Communities, Inc.
5465 Morehouse Drive, #250
San Diego, California 92121

Complaint No. R9-2005-0107
For
Administrative Civil Liability
\$262,500

WDID No. 9 37C321382
Morro Hills

By signing below, I agree to waive Fieldstone Communities, Inc.'s right to a public hearing before the California Regional Water Quality Control Board, San Diego Region with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am authorized to give up Fieldstone Communities, Inc.'s right to be heard, and to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Signature

Title

Date

Print your name

Send this signed form to:

John H. Robertus, Executive Officer
C/O Compliance Assurance Unit
California Regional Water Quality Control Board – San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

California Environmental Protection Agency



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